

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEYRON LAMONTE BINNS,

Plaintiff,

v.

AMERICAN GENERAL LIFE AND
ACCIDENT INSURANCE CO., et al.,

Defendants.

No. 2:20-cv-1120-TLN-KJN PS

ORDER

Plaintiff Binns is a state prisoner, proceeding pro se.¹ On June 3, 2020, plaintiff filed a civil rights complaint against his insurance company and certain employees thereof, and requested leave to proceed in forma pauperis under 28 U.S.C. § 1915. (ECF Nos. 1, 2.) The court found Plaintiff Binns satisfied Section 1915,² screened the complaint, and found it failed to state a claim because defendants were private citizens and not liable under 42 U.S.C. Section 1983. (See ECF No. 7.) The court granted leave to amend, and after an extension of time, a first

¹ This case proceeds before the undersigned by Local Rule 302(c)(21). See 28 U.S.C. § 636(b)(1).

² The complaint also references an alleged plaintiff Gentry, who also submitted an application to proceed in forma pauperis. The court did not explicitly rule on Gentry's motion in the previous order, as Gentry did not sign the complaint. Gentry has not signed the first amended complaint either. See Fed. R. Civ. P. 11. Thus, this screening order is effective for plaintiff Binns only. Should Gentry believe he has a claim under the alleged insurance policy, he may file his own complaint, refile his IFP application, and file a notice of related cases. See Local Rule 123.

1 amended complaint was filed. (ECF No. 12.) The court now screens this amended complaint.

2 The amended complaint again asserts claims under Section 1983 against the insurance
3 company and its employees. As the court previously informed Binns, these claims are not
4 cognizable and must be dismissed. Rabieh v. Paragon Sys. Inc., 316 F. Supp. 3d 1103, 1109
5 (N.D. Cal. 2018) (“It is generally presumed that private individuals and entities do not act ‘under
6 color of state law’ within the meaning of § 1983.”) (citing Florer v. Congregation Pidyon
7 Shevuyim, N.A., 639 F.3d 916, 922 (9th Cir. 2011)). However, the complaint also references
8 “breach of contract, fraud, intentional/negligent misrepresentation,” and refers to an insurance
9 policy allegedly issued by defendant “American General Life and Accident Insurance Company”
10 with damages over \$75,000. (ECF No. 12 at 5.) The amended complaint also claims diversity
11 jurisdiction, as it states (liberally construed) that the parties are residents of different states.
12 Without making any ruling on the substance of the claims in the first amended complaint, the
13 court finds the potential for cognizable claims. This order does not preclude any defendant from
14 challenging diversity jurisdiction, whether any claims have been sufficiently stated, or any other
15 such dismissal motion under Rule 12 of the Federal Rules of Civil Procedure. However, service
16 of the breach of contract, fraud, and misrepresentation claims may proceed past the screening
17 stage.


18 Given that Plaintiff Binns is currently incarcerated, he is required to pay the statutory
19 filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1); see also, e.g., Boccio v.
20 Am. Bible Soc., 637 F. Supp. 2d 65, 67 (D. Mass. 2009) (rejecting the assertion that a filing fee is
21 not required for cases relating to subjects other than conditions of confinement, as Section
22 1915(b) calls for a “prisoner” to pay the full filing fee when bringing any civil action). By this
23 order, Binns will be assessed an initial partial filing fee in accordance with the provisions of 28
24 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the
25 initial partial filing fee from Binns’s trust account and forward it to the Clerk of the Court.
26 Thereafter, Binns will be obligated for monthly payments of twenty percent of the preceding
27 month’s income credited to Binns’s prison trust account. These payments will be forwarded by
28 the appropriate agency to the Clerk of the Court each time the amount in Binns’s account exceeds

\$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff Binns is obligated to pay the statutory filing fee of \$350.00 for this action. He is assessed an initial partial filing fee in accordance with 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the Director of the California Department of Corrections and Rehabilitation filed concurrently herewith;
 2. Service is appropriate for the defendants named in the first amended complaint (ECF No. 12 at 2-3.);
 3. The Clerk of the Court shall send Binns [7] USM-285 forms, one summons, an instruction sheet and a copy of the complaint filed July 31, 2020;
 4. Within thirty days from the date of this order, Binns shall complete the attached Notice of Submission of Documents and submit the following documents to the court:
 - a. The completed Notice of Submission of Documents;
 - b. One completed summons;
 - c. One completed USM-285 form for each defendant listed in number 3 above;
 - d. [8] copies of the endorsed complaint filed July 31, 2020; and
 5. Plaintiffs need not attempt service on defendants and need not request waiver of service.
- Upon receipt of the above-described documents, the court will direct the United States Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

Dated: August 4, 2020


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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NOTICE OF SUBMISSION

Plaintiff submits the following documents in compliance with the court's order filed

_____:

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____
Complaint

DATED:

Plaintiff